BERTRAM, ACTING C.J. & HOLMES, ACTING J.

REX v. ELIA LAMBI

but no case is cited as having been decided on this principle and we have consequently no example of its application. It is possible that if such a case arose in this country, it might be considered a case to be dealt with under Art. 183, like the two cases mentioned above. It should however be noted that in neither of these cases is it clear that there was any intention to injure, though there may have been a technical assault.

In this case, however, we have come to the conclusion, after carefully considering the facts, that they do not come within the principle. If a man throws a heavy stone at another, who is retiring from a quarrel, at a level with his head, the risk of that other turning round and receiving the blow in the eye, is a risk which the assailant may be reasonably held bound to take into account, and the result is one which may justly be imputed to him.

There is no doubt an accidental element in the case, inasmuch as but for the accident of the man turning round he would not have lost his eye, but we do not think that the wound can be described as an accidental one within the meaning of Art. 183.

For these reasons we are of opinion that the appeal must be dismissed.

Appeal dismissed.

BERTRAM, ACTING C.J. & FISHER, ACTING J. 1908

July 9

[BERTRAM, ACTING C.J. AND FISHER, ACTING J.]

IN RE A PETITION BY COSTA CONSTANTINIDES AND ANNA CONSTANTINIDES

AND

IN RE THE MALICIOUS INJURY TO PROPERTY LAW, 1894.

MALICIOUS INJURY—PROPERTY WITHIN MUNICIPAL LIMITS OF NICOSIA—"LANDS OF NICOSIA"—VILLAGE AS TERRITORIAL AREA—MALICIOUS INJURY TO PROPERTY LAW, 1894, SECS. 2 AND 20—MUNICIPAL COUNCILS LAW, 1882, SEC. 4.

By an order of the High Commissioner in Council, made the 24th June, 1882, in pursuance of the Municipal Councils Law, 1882, the municipal limits of Nicosia were defined so as to include, amongst others, certain lands of the village of Kuchuk Kaimakli.

HELD: That the said lands, so comprised in the municipal limits of Nicosia did not thereby become "lands of Nicosia" within the meaning of the Malicious Injury to Property Law, 1894, but remained lands of Kuchuk Kaimakli, and that the village of Kuchuk Kaimakli was consequently liable to pay compensation under the law in respect of property within such lands maliciously damaged by persons unknown.

The administrative system, which is the basis of the Malicious Injury to Property Law, 1894, is that of the village communal area administered by a Mukhtar and Azas, and for the purposes of this system the boundaries of any such area are not affected by an alteration of the municipal limits of a Municipality exercising authority within the area.

This was an appeal from the judgment of the District Court of Nicosia.

The petitioners presented a petition to the District Court praying for an order on the inhabitants of the village of Kuchuk Kaimakli

to pay compensation for a malicious injury, by persons unknown, to certain property of the petitioners alleged to be situated within the lands of the village of Kuchuk Kaimakli.

The property in question was situated outside the walls of Nicosia, but within the municipal limits as defined by the order of the High Commissioner in Council of the 24th June, 1882. The land on which the property was situated was registered as belonging to the village of Kuchuk Kaimakli and it was admitted that, but for the order referred to, it was within the lands of Kuchuk Kaimakli.

The Respondents, on behalf of the inhabitants of the village, opposed the petition on the ground that the property in question was within the lands of Nicosia, and consequently excluded from the operation of the Law by Sec. 20.

The District Court rejected the petition on this ground.

The petitioners appealed.

Paschales Constantinides and *D. Stavrinides* for the Appellants.

Theodotou for the Respondents.

The Court allowed the appeal.

Judgment: The question for our consideration in this case is whether certain property within the meaning of the Malicious Injury to Property Law, 1894, which was maliciously damaged by persons unknown was situated within the area to which the law applies.

The property in question is within the municipal limits of Nicosia as delimited by the order of the High Commissioner in Council of the 24th June, 1882. It is contended by Mr. Theodotou that it is consequently " property contained within the lands of Nicosia," within the meaning of Sec. 20, and therefore excluded from the operation of the law. The District Court has given judgment in accordance with this view.

It is admitted that the property in question is outside the walls of Nicosia, and that before the order referred to it was not within any of the quarters of the town of Nicosia. Nor is it suggested that prior to that order it was " within the lands of Nicosia." It is maintained however that the effect of the order was to include the property in question within one of the quarters of Nicosia, and to bring it within " the lands of Nicosia " within the meaning of the law.

In our opinion this contention is erroneous.

The administrative scheme upon which this law is based is a scheme which takes no account of municipal limits. It is based upon that general reorganisation of the territorial divisions of the Ottoman Empire on the French model which was inaugurated soon after the publication of the Hatti Humayoun in 1856.

By a series of laws, some of them in great measure covering the same ground (7 Jemazi-ul-Akhir, 1282, 29 Sheval, 1287 and 1 Rebi-ul-Evvel, 1293) the Vilayets of the Empire was divided into *Sanjaks* (arrondissements), the *Sanjaks* into *Kazas* (cantons), the *Kazas* into *Nahiehs* (cercles communaux), and the *Nahiehs* into

"villages" (*communes*). Where the "village" was a large one it was subdivided into quarters. The village (or the quarter of a village) is thus an administrative territorial unit. It comprises the houses of the village and the lands appertaining to it. It is governed by a communal council, consisting of the Mukhtar and Azas, sometimes described as the Village Commission. Monasteries, metoches, tekes and chiftliks would seem from Sec. 19 of the law now under consideration, not to be comprised in these areas but with these exceptions (if they are exceptions), all privately owned land in Cyprus, whether rural or urban, is contained within one of these territorial units, and is subject to the administration of a Mukhtar and his communal council. This territorial area is recognised for all sorts of purposes,—the appointment of Field Watchmen (Law 12 of 1896), Public Loans (13 of 1897), Wheat Pest Prevention (16 of 1897), Irrigation (11 of 1887), Village Obligations (5 of 1908) and many others. Most plainly of all, it is recognised and perpetuated by the Revenue Survey Law, of 1880, and the general system of land registration is based upon it.

Now it is perfectly clear that the principle of this system, *i.e.*, the principle of the village (or quarter) as a territorial area, is the basis of the Malicious Injury to Property Law. By Sec. 2, notice of the injury is to be given to the Mukhtar and Commission of the village *within the lands* of which the property is situated. By Sec. 20 property contained *within the lands* of the six principal towns is excluded from the operation of the law. The whole machinery of the law works through the Mukhtar. It is plain that both the included areas and the excluded areas are communal areas. The included areas are the lands of the various village communes through the Island. The excluded areas are the lands of the urban communes of the six principal towns.

In the Law of 29 Sheval, 1287, on the administration of Vilayets, were certain provisions (Chapter VII) for establishing provincial Municipalities. These were replaced by the Law of 27 Ramazan, 1294, which is now superseded by the Municipal Councils Law, 1882. The Municipalities so created did not in any way interfere with the village areas, and the urban quarters under the administration of Mukhtars. The two systems co-exist side by side. The powers and duties of Municipal Councils are altogether different from those of Mukhtars and Azas. It is not in the least necessary that municipal boundaries should correspond with communal boundaries. Originally it is possible that they may have done so, The modern system however is to define the municipal limits as a space within a given radius, and it is quite obvious that the boundaries of the areas so created could not correspond with any boundaries of any existing communal area.

We are therefore of opinion that the extension of the municipal limits by the order of the High Commissioner in 1882 did not avail either to increase the area of the lands of the Nicosia communal quarters, or to restrict that of the lands of Kuchuk Kaimakli. The property in question must therefore be taken to be within the lands of Kuchuk Kaimakli and the village of Kuchuk Kaimakli is liable to pay compensation.

The appeal must therefore be allowed with costs.

Appeal allowed.